

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

MITAL SUMAN KUMAR PATEL,

Plaintiff,

v.

No. 1:20-cv-00870-SCY-KK

ROBERT WILKE, Secretary of United States
Department of Veterans Affairs,

Defendant.

MEMORANDUM OPINION AND ORDER
DENYING THIRD MOTION FOR ENTRY OF DEFAULT

THIS MATTER comes before the Court on *pro se* Plaintiff's Third for Entry of Default Against the Defendant, Doc. 18, filed January 26, 2021.

Plaintiff's Third Motion for Entry of Default is essentially identical to Plaintiff's First and Second Motions for Entry of Default. *See* Doc. 12, filed December 17, 2020; Doc. 14, filed January 25, 2021. The Court denied the First and Second Motions for Entry of Default, after discussing the procedure in Fed. R. Civ. P. 4 for serving an agency, officer or employee of the United States and for serving the United States, because Plaintiff had not filed an affidavit stating that he properly served Defendant, he had not shown that he properly served Defendant by sending the summons and Amended Complaint by registered or certified mail, and he had not shown that he properly served the United States. *See* Mem. Op. and Order Denying Motion for Entry of Default, Doc. 13, filed January 15, 2021.

In his January 26, 2021, email submitting the Third Motion for Entry of Default to the Clerk's Office for filing, Plaintiff stated: "I would like to submit the motion of default against U.S. Dept of [V]eterans Affairs. As required[,] I have submitted proof of delivery and also affidavit for

service.” The affidavit shows that Plaintiff served Defendant Robert Wilke, Secretary, U.S. Dept. of Veterans Affairs; it does not show that Plaintiff also served the United States as required by Fed. R. Civ. P. 4(i)(2). *See* Doc. 17, filed January 25, 2021. The Court denies Plaintiff’s Third Motion for Entry of Default because he has not shown that he has properly served Defendant Wilke. Service on Defendant Wilke is not complete until the United States has been properly served. *See* Fed. R. Civ. P. 4(i)(2) (stating that to serve a United States agency, officer or employee, a party must serve the United States); Fed. R. Civ. P. 4(i)(1) (setting forth procedure for serving the United States).

The Court recognizes that Plaintiff is proceeding *pro se* and is interested in resolving this case quickly. The Court and the parties share the responsibility to secure the just, speedy, and inexpensive determination of every action. *See* Fed. R. Civ. P. 1 advisory committee note to 2015 amendment. However, “[p]*ro se* status does not excuse the obligation of any litigant to comply with the fundamental requirements of the Federal Rules of Civil and Appellate Procedure.” *Yang v. Archuleta*, 525 F.3d 925, 927 n. 1 (10th Cir. 2008).

Generally, *pro se* litigants are held to the same standards of professional responsibility as trained attorneys. It is a *pro se* litigant’s responsibility to become familiar with and to comply with the *Federal Rules of Civil Procedure* and the *Local Rules of the United States District Court for the District of New Mexico* (the “Local Rules”).

Guide for Pro Se Litigants at 4, United States District Court, District of New Mexico (November 2019). The Local Rules, the Guide for Pro Se Litigants and a link to the Federal Rules of Civil Procedure are available on the Court’s website: <http://www.nmd.uscourts.gov>.

Rule 4 states clearly the procedure for serving a United States agency, officer or employee. Plaintiff’s failure to comply with Rule 4 has unnecessarily caused the Court, which has a very heavy caseload, to expend time addressing the issue thereby delaying the resolution of the Court’s

other cases. Should Plaintiff be unable or unwilling to comply with the applicable rules, the Court may impose procedures necessary to manage the docket in this case.

IT IS ORDERED that Plaintiff's Third Motion for Entry of Default Against the Defendant, Doc. 18, filed January 26, 2021, is **DENIED**.



KIRTAN KHALSA
UNITED STATES MAGISTRATE JUDGE